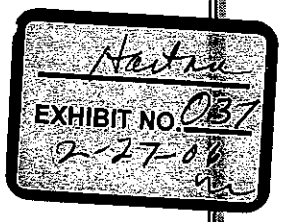
THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MASSACHUSETTS



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IN RE: PHARMACEUTICAL INDUSTRY AVERAGE WHOLESALE PRICE LITIGATION	MDL DOCKET NO. 01CV12257-PBS
**********	DEPOSITION OF
THIS DOCUMENT RELATES TO: ALL ACTIONS	JOHN M. KILLION JANUARY 6, 2006
**********	

H I G H L Y C O N F I D E N T I A L

DEPOSITION of JOHN M. KILLION, a witness called on behalf of the Defendant Johnson & Johnson pursuant to the Federal Rules of Civil Procedure, before Judith McGovern Williams, Certified Shorthand Reporter, Registered Professional Reporter, Certified Realtime Reporter, Certified LiveNote Reporter, and Notary Public in and for the Commonwealth of Massachusetts, at the offices of Robins, Kaplan, Miller & Ciresi, L.L.P., 800 Boylston Street, Boston, Massachusetts 02199, on Friday, January 6, 2006, commencing at 9:41 a.m.

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EXHIBITS

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PROCEEDINGS

JOHN M. KILLION, first having been duly sworn, testified as follows in answer to direct examination by MR. HAAS:

Q. Please state your name for the record.
A. John Killion.
Q. Mr. Killion, are you currently employed?
A. Yes, I am.
Q. By whom?
A. Blue Cross/Blue Shield of Massachusetts.
Q. What is your current position?
A. I am senior director, ancillary services.
Q. What is ancillary services?
A. Responsibility for contracting with all provider types with the exception of acute care hospitals and physicians, so I have responsibility for contracting with provider

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types, such as ambulance, radiology, laboratory, physical therapy, occupational therapy, speech therapy, approximately a little over 40 or so different provider types other than M.D.s or acute care hospitals.
Q. Does any of your contracting with these various ancillary entities involve contracting for the reimbursement of physician-administered drugs?
A. No.
Q. Do you have an understanding that physician-administered drugs are the drugs at issue?
A. Yes.
Q. Who at Blue Cross/Blue Shield of Massachusetts has the analogous position to yours but that is in charge of reimbursement of physician-administered drugs?
A. That would be my peer, Sheila Cizauskas, who is the senior director for hospital physician contracting.
Q. I am sorry. I didn't catch that name?

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A. C-I-Z-A-U-S-K-A-S.
Q. What was her first name?
A. Sheila.
MR. HAAS: Off the record.
(Discussion off the record.)
MR. HAAS: We again had our morning difficulties with the call-in number, so we just started, just, about five minutes into it. So we are just going to continue with the background of the witness.
Q. What is Ms. Cizauskas' title?
A. She is senior director for hospital contracting.
Q. Is she also responsible for contracting with physician groups and physicians?
A. She is, along with one other individual.
Q. Who is that other individual?
A. Steve Fox.
Q. What is Mr. Fox's title?
A. Senior director, provider relations.
Q. Who do you report to?

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A. Deb Devaux.
Q. What is her title?
A. Senior vice president, contracting.
Q. In your current --
MR. HAAS: Withdraw that question.
Q. When did you start at Blue Cross/Blue Shield of Massachusetts?
A. 2001.
Q. What was your initial position?
A. Director, ancillary services.
Q. At any time from 2001 to the current time frame, have you had any responsibilities with respect to the negotiation or contracting of reimbursement with physicians for drugs administered to Blue Cross/Blue Shield of Massachusetts members?
A. Can you repeat that again?
Q. Sure. At any time from 2001 to today - -
A. Yes.
Q. -- have you had any responsibilities with respect to contracting for the reimbursement

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or the negotiation of reimbursement with physicians for drugs that have been administered to Blue Cross/Blue Shield of Massachusetts members?
A. Not directly.
Q. When you say "not directly," have you been indirectly involved in the contracting or negotiation of reimbursement for physician-administered drugs?
A. Yes.
Q. What is the indirect role that you have had?
A. In 2003, responsibility for implementation of specialty pharmacy programs.
Q. Does Blue Cross/Blue Shield of Massachusetts have a specialty pharmacy program that is used to supply drugs to physicians for administration of drugs to the patients -- to the members of Blue Cross/Blue Shield of Massachusetts?
A. Can you repeat that again?
Q. Sure. Does Blue Cross/Blue Shield of

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Massachusetts have a specialty pharmacy program that involves the provision of drugs to physicians for the administration to members of Blue Cross/Blue Shield of Massachusetts?
A. We have a specialty pharmacy program. It doesn't provide the drugs directly to the physicians. No.
Q. Do you have a specialty pharmacy program that involves at all the supply of drugs, either to the physician or to the patient, which are thereafter administered under the supervision of physicians or their staff?
A. Yes, we do.
Q. Okay. When was that program implemented?
A. In 2004 and 2005.
Q. What is the name of that program?
A. It is our specialty pharmacy program.
Q. Does Blue Cross/Blue Shield of Massachusetts have its own specialty pharmacy, or does it contract with a specialty pharmacy?
A. Contract.

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Q. What is the specialty pharmacy or pharmacies?
A. Priority Healthcare.
Q. Any other one?
A. Caremark.
Q. Any others?
A. No.
Q. Is there a division of Priority Healthcare that is actually the specialty pharmacy?
A. Yes.
Q. Which division?
A. Priority Healthcare is a specialty pharmacy.
Q. A physicians' supply company; right?
A. It is a specialty pharmacy company that supplies high-cost injectables.
Q. Right. Is there a particular division of Priority Healthcare that you work with, or is it just the Priority entity?
A. Priority.
MR. SULLIVAN: Erik, before we got

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started, maybe it was due to the telephone or whatnot, I just want to make sure that the entire transcript is designated as highly confidential.
MR. HAAS: Sure.
BY MR. HAAS:
Q. Aside from your involvement with the implementation of the specialty pharmacy program you just described, have you had any other involvement, directly or indirectly, with the contracting for the reimbursement of physician-administered drugs or the negotiation of such contracts?
A. No.
Q. When did you switch positions from director of ancillary contracting to senior director?
A. I didn't -- oh, switch positions from? I am sorry. Director of ancillary to senior director?
Q. Yes.
A. That was in late 2004, I believe.
Q. So you held your position as the

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director until late 2004, at which time you were elevated to senior director?
A. I believe that that's correct.
Q. When did you first hear about this litigation?
A. Approximately 40 days ago or so.
Q. What have you done in connection with this litigation since then?
A. Researched information on AWP.
Q. What did you research?
A. Any documents we have relative to AWP.
Q. And you say "documents we have." Is that documents Blue Cross/Blue Shield of Massachusetts has?
A. Correct.
Q. How did you research what documents you had?
A. By going through my files.
Q. Did you search anybody else's files?
A. No.
Q. Did you review any publicly-available information concerning AWP?

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A. Can you reask that question?
Q. Sure. Did you do any research, in your words, outside of your own files into what was in the public domain that pertained to the term "AWP" or the meaning of the term "AWP"?
A. No, I did not.
Q. Did you review any documents or surveys or studies involving acquisition cost?
MR. SULLIVAN: Objection to the form.
Q. You can answer, unless he instructs you not to answer.
A. Can you be more clear?
Q. You know, did you review any studies, surveys, analyses in connection with your research involving the acquisition cost that doctors pay for drugs?
A. At the point in which I knew of the litigation?
Q. We are talking now in connection with what you said, the research that you did after learning of the litigation 40 days ago.
A. I am -- I am aware of an article that

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appeared in The Wall Street Journal.
Q. What did --
A. I believe it was in the early part of 2004.
Q. What was the nature of that article?
A. It referenced the acquisition cost oncologists pay for oncology medications.
Q. Did you review any other publicly-available information concerning acquisition costs?
A. No, I did not.
Q. Aside from looking for documents from your own files and reading The Wall Street Journal article, what else did you do in connection with this litigation, including the preparation for this deposition?
A. I think preparation, meeting with Steve Skwara, understanding the litigation as well as the preparation -- preparing for the deposition.
Q. Did you read the Complaint that has been filed in this action?
A. No, I have not.

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Q. Have you read deposition transcripts of the depositions taken in this action?
A. No, I have not.
Q. When did you meet with counsel? I don't want to get into the subject matter of your discussions with counsel. Just when did you meet with counsel in preparation for the deposition?
A. That would have been Wednesday.
Q. Was that the only meeting you had with counsel?
A. That's correct.
Q. Aside from your meeting with counsel and any communications with counsel, which I don't want to discuss, did you do anything else to obtain an understanding as to how Blue Cross/Blue Shield of Massachusetts contracts for or negotiates for the reimbursement of physicians for drugs administered to Blue Cross/Blue Shield of Massachusetts members?
A. No.
Q. Let me step back for a minute, and if you could describe for the record your education

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post high school.
A. Undergraduate degree, Providence College.
Q. What was your specialty?
A. Healthcare services, or healthcare administration.
Q. What year did you obtain the degree?
A. 1985. And graduate --
Q. Let me stop you there.
A. Sure.
Q. In the course of your studies for your healthcare administration degree, did you study at all the workings of the pharmaceutical industry or the pricing of prescription drugs?
A. Not to my recollection.
Q. Did you research at all the Medicare system in connection --
MR. HAAS: Withdraw that.
Q. Did your courses involved in obtaining your degree in healthcare administration involve at all a review, analysis, study, or overview of the Medicare system?

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A. Not to my recollection.
Q. What was the nature of the courses that you took, generally?
A. Policy-related courses, healthcare administration-related courses --
Q. When you say --
A. -- statistical courses.
Q. Give me an understanding of what the degree is. When you say "healthcare administration-related courses," what does that mean?
A. Courses related to the healthcare system and the delivery of healthcare.
Q. When you say "healthcare system," are you focusing on the provider side, or does that include something bigger, such as the supply of healthcare services and drugs, the reimbursement of drugs and services? How -- what does the term "healthcare system" mean?
A. The delivery of healthcare services to members.
Q. Did you get an understanding through

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your courses at all as to how the reimbursement of healthcare services worked?
A. No.
Q. So you didn't review at all the insurance model?
A. No.
Q. So you didn't focus at all on the manufacture and supply end of the chain or on the insurance side of the chain. Is it accurate, therefore, that your focus was on the provider aspect of the healthcare system?
A. I would say that's correct.
Q. So hospitals, physicians?
A. Correct.
Q. Did you also study retail pharmacies?
A. No.
Q. As part of your studies, did you gain an understanding or did you gain an overview of how hospitals and physicians acquire drugs?
A. No.
Q. What other education did you obtain after obtaining your degree from Providence?

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A. Graduate courses at Suffolk University.
Q. What was the nature of those courses?
A. Public health.
Q. What does the term "public health" mean?
A. I took courses in --
MR. SULLIVAN: He asked you what the term "public health" means.
A. The delivery of services, healthcare services.
Q. What type of classes did you take?
A. Statistics, and I can't recall the other courses.
Q. Did you take any courses involving the United States public healthcare system, Medicare or Medicaid?
A. Not that I recall.
Q. Okay. What was the nature of the statistics classes that you took that gave them a public health orientation?
A. I don't recall.
Q. When did you graduate from Suffolk?

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A. I have not graduated yet from Suffolk.
Q. When did you start taking courses at Suffolk?
A. Let's see. Approximately 15 years ago, I would say.
Q. When was the last time you took a course at Suffolk?
A. Thirteen years ago.
Q. So it is fair to say you didn't complete your degree?
A. That's correct.
Q. Have you taken any other courses or studies involving the healthcare system since then?
A. No.
Q. Have you taken any training or courses involving prescription drugs?
A. No.
Q. Please review for the record your employment history after graduating from Providence in 1985.
A. I actually worked a year at Blue

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Cross/Blue Shield of Massachusetts.
Q. What was your position at that time?
A. I was in the benefit department.
Q. And when you say "benefit department," what was that? What were the responsibilities of that department?
A. Responding to member-related benefit issues.
Q. So you held that position from 1985 to 1986?
A. That's correct.
Q. What did you do next?
A. I left Blue Cross/Blue Shield of Massachusetts and went to Tufts Health Plan.
Q. What was your position at Tufts?
A. I was a manage in the ancillary services department.
Q. What were your responsibilities as a manager in the ancillary services department?
A. Contracting with the ancillary network.
Q. Did any of that responsibility or work involve contracting for the reimbursement of

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physician-administered drugs?
A. No.
Q. How long did you hold that position?
A. I held that position for approximately until '94, '95.
Q. During your time at Tufts from 1986 to 1994 or '95, did you gain an understanding as to the methodologies Tufts used to reimburse physicians for drugs administered to its members?
A. Can you rephrase -- say that time period again? I am sorry.
Q. You said 1986 to 1994 or '95 while you were a manager in the ancillary services department?
A. Yes.
Q. Did you gain an understanding how Tufts reimbursed physicians for drugs administered to its members?
A. No, I did not.
Q. What did you do next?
A. I became the manager of pharmacy operations at Tufts.

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Q. What were your responsibilities in that role?
A. I was responsible for managing the relationship with our pharmacy benefit manager.
Q. Who was the PBM at the time?
A. It was PCS, Prescription Card Services.
Q. And when you say "managing the relationship," what in particular did you do?
A. Contract responsibility and program development.
Q. In connection with your work as the manager of the pharmacy operations of Tufts, were you involved at all with the contracting of pharmacies themselves?
A. No.
Q. Is it fair to say that Tufts utilized the network of PCS?
A. That's correct.
Q. So your contract was with PCS?
A. Correct.
Q. When you said -- when you referred to program development, what programs are you

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referring to?
A. Report development to help physicians understand prescribing consistent with programs that we had put in place.
Q. Are those formulary-type programs?
A. Correct.
Q. What type of formulary programs did Tufts have in place at the time?
A. We had a formulary of preferred drugs.
Q. Did Tufts have a prior authorization program?
A. Yes, we did.
Q. Did Tufts have a generic first program?
A. When you say "generic first program" --
Q. Did Tufts have any program in place to encourage the prescription of generic drugs?
A. We encouraged it, yes.
Q. In what way?
A. Providing reports to physicians; profiling their prescribing patterns against other like physicians for similar drugs.
Q. Did Tufts provide any economic

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incentives to the PBM or to the physicians in order to encourage the prescription of generic drugs?
A. Yes.
Q. What economic incentives?
A. Physicians were at risk for pharmacy.
Q. What does that mean?
A. There was a budget established.
Q. Is it that physicians were involved in a capitated plan?
A. It was a capitated plan.
Q. We are talking now about the pharmacy benefits side of the business; right?
A. That's correct. Retail pharmacy.
Q. What was the risk that the physicians bore under this capitated pharmacy benefit plan?
A. As I recall, there was a budget established by a physician group.
Q. The physicians were not acquiring the drugs; correct?
A. When you say the physicians weren't acquiring the drugs --

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Q. You said the budget was established by physician group. What was that budget for?
A. No. Tufts Health Plan established the budget by physician group.
Q. What was that budget for?
A. For the delivery -- or for the expense of retail pharmacy services.
Q. What happened if that budget was exceeded?
A. I don't recall if there was any -- any downside if the budget was exceeded.
Q. So ultimately it comes back to my initial question: How were the physicians at risk with respect to this retail pharmacy benefit program?
A. I don't recall specifically how they were at risk.
Q. Did Tufts contract with physicians in connection with this retail pharmacy benefit program?
A. Not in connection with the program, no.
Q. But it is your recollection this plan

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somehow provided an economic incentive to the doctors to prescribe generics first?
A. That was one of the features of the program.
Q. What were the other features of the program?
A. Prescribing off of the formulary; prescribing consistent with quantity limits that were in place; obtaining prior authorization for specific drugs that were identified.
Q. Did the amount of the reimbursement that the physicians received from Tufts under -- depend at all upon their compliance with this program?
A. I'm not sure if I understand what you mean by reimbursement.
Q. To effectuate this program, did Tufts contract with the physicians?
A. Tufts had contracts with the physicians.
Q. And in those contracts, was the physicians' compliance with this program, the

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retail pharmacy program, a condition as to -- a condition that impacted the level of reimbursement they received?
A. I believe the answer to that is yes.
Q. Did you have an understanding of those contracts in connection with your work on these programs?
A. Not directly.
Q. Did you have an understanding as to whether or not the reimbursement of the drugs administered in office were also included within this capitated program of Tufts?
A. I don't believe they were.
Q. Do you have an understanding of whether Tufts had any program in place to encourage the administration of generic drugs in office?
A. Not to my recollection.
Q. What was your understanding as to how Tufts was reimbursing for the drugs administered in office?
A. I don't recall.
Q. How long did you hold that position?

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From 1995 until when?
A. Approximately three years.
Q. 1995 to 1998?
A. Yes.
Q. What did you do next?
A. I went to a company called Media One.
Q. What was the work that Media One did?
A. It was a cable company.
Q. All right. What was your position?
A. It was a project management oversight position.
Q. How long did you hold that position?
A. Four months.
Q. Where did you go next?
A. Back to Tufts.
Q. What was your position when you returned?
A. I am sorry. When I left -- correction -- when I left Blue Cross, prior to going to Media One, I went to --
MR. SULLIVAN: I think you misspoke, when you left Tufts?

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BY MR. HAAS:
Q. When you left Tufts?
A. When I left Tufts.
Q. In 1998?
A. In 1998.
Q. All right.
A. I went to Harvard Pilgrim.
Q. All right. What was your position at Harvard Pilgrim in 1998?
A. I was manager of physician contracting.
Q. What were your responsibilities in that role?
A. Responsibilities were to -- specific responsibilities were to move physicians that were in one large risk pool without being affiliated with a hospital entity to a hospital entity as part of a risk relationship.
Q. I am sorry. I didn't understand that. Your responsibilities involved moving physicians from a --
MR. HAAS: Withdraw that.
Q. Your responsibilities involved moving

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physicians to a relationship with a hospital?
A. Correct.
Q. What relationship?
A. A risk relationship.
Q. What does that mean?
A. A relationship where physicians bore financial risk for the services they provided consistent with whatever budget Harvard Pilgrim had established at the time.
Q. But what was the relationship with the hospital that was related to that risk?
A. That the hospitals were tied or the physicians were tied directly to the budget that was established with that hospital, that IPA entity, as opposed to being in a pool unto themselves that didn't have any management under a hospital relationship.
Q. Again when we're talking about these risk pools, we are talking about capitated reimbursement programs?
A. Yes.
Q. So is it my understanding that Harvard

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Pilgrim had a capitated reimbursement program with physicians outside of hospitals, and your job was to bring those physicians into a pool that was -- that involved capitated reimbursement through a hospital?
A. That's correct. And although those physicians may have been part of a risk arrangement in that pool prior to that relationship with the hospital. Some of them might have been paid direct fee schedule and not all of those.
Q. How successful were you in moving physicians to this hospital-based capitation pool?
A. Almost 99 percent of the physicians were moved --
Q. So --
A. -- from that poorly-performing pool.
Q. When you say it is a poorly-performing pool, what does that mean?
A. Harvard Pilgrim was going through a restructuring at that time, and that was a pool

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of -- a large pool of physicians that financially was causing a strain on the company.
Q. Because the reimbursement was large?
A. I don't know specifically. Because the reimbursement was large or was an issue in regards to physicians not having a management relationship through a hospital and physician leadership.
Q. How did that relationship of the hospital impact the level of moneys that Harvard Pilgrim paid?
A. I don't know.
Q. Okay. So at the completion of your project, Harvard Pilgrim was left with a situation where they were managing physicians' reimbursement in a capitated pool for the hospital management?
A. At the completion, correct.
Q. Now you said that this was a project that involved a particularly poorly-performing pool of physicians?
A. That's correct.

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Q. What percentage of the physicians in Harvard Pilgrim's network did this pool represent?
A. I don't recall.
Q. Aside from this capitated reimbursement relationship with physicians, how did reimbursement -- how did Harvard Pilgrim reimburse other physicians for drugs administered in hospitals?
A. I don't know.
Q. When you say it was a fairly large pool, how many physicians are we talking about?
A. To the best of my recollection, somewhere around 2,000 physicians.
Q. All located in Massachusetts?
A. Yes.
Q. Did you have an understanding at that time as to what the total physician network that Harvard Pilgrim had?
A. I did at the time. I don't recall now.
Q. Do you understand in general figures what a range was? Was it more than 10,000, less

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than 10,000?
A. I believe it was more than 10,000, but again I don't recall.
Q. How long did you hold that position?
A. I was there for approximately two years.
Q. What did you --
A. A little over two years.
Q. What did you do next?
A. I left and went to Media One.
Q. You were at Media One for four months?
A. That's correct.
Q. And then what did you do?
A. I left Media One and went back to Tufts Health Plan.
Q. Okay. What was the position at Tufts that you took on?
A. I was in charge of ancillary services.
Q. How long did you hold that position?
A. One year.
Q. And then you came to Blue Cross/Blue Shield?

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A. That's correct.
Q. In your role at Tufts in charge of ancillary services, did you have any involvement with the reimbursement of physician-administered drugs?
A. No, I did not.
Q. So is it fair to say that during your career aside from the what you have testified with respect to your work as the manager of pharmacy operations at Tufts in managing the nexus between the retail pharmacy program and the physician side of the business and your role at Harvard Pilgrim in shifting physicians to the capitated hospital program, you have had no involvement with the reimbursement of physician-administered drugs?
A. I have had involvement through the specialty pharmacy program.
Q. Okay. With respect to other than -- other than with respect to the role we discussed at Tufts and the role we discussed at Harvard Pilgrim and the specialty pharmacy program that

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you mentioned, have you had any other involvement with the reimbursement of physician-administered drugs?
A. No.
Q. Did you do anything to gain knowledge as to the reimbursement of physician-administered drugs for the specific purposes of this deposition?
A. Other than my discussion with Steve Skwara.
Q. On Wednesday?
A. No. Forty days, when I first heard about this.
Q. Okay. So you had a discussion with your counsel, and I don't want to get into the subject matter of it, but aside from that discussion with counsel, have you done anything else to obtain an understanding of the reimbursement and the negotiation and the contracting for the reimbursement of physician-administered drugs?
A. No.

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MR. SULLIVAN: Could we take a break?
MR. HAAS: Sure.
MR. SULLIVAN: We have been going about an hour.
MR. HAAS: Sure.
(Recess taken at 10:22 a.m.)
(Recess ended at 10:33 a.m.)
MR. HAAS: Back on the record.
BY MR. HAAS:
Q. Mr. Killion, have you ever been deposed before?
A. Yes, I have.
Q. When?
MR. SULLIVAN: Before we get into that, I think the witness would like to have the question that you asked just before the break reread. I'm not sure he properly understood that.
MR. HAAS: I have no problem with your clarifying your testimony, if you choose, Mr. Killion. If I could have the court reporter reread the last question before the break.

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(The reporter then read back as follows: "Question: Okay. So you had a discussion with your counsel, and I don't want to get into the subject matter of it, but aside from that discussion with counsel, have you done anything else to obtain an understanding of the reimbursement and the negotiation and the contracting for the reimbursement of physician-administered drugs?
"Answer: No.")
THE WITNESS: And for clarification, my understanding was when you were asking me that consistent with, I believe, the previous question, which was in preparation for the deposition, which was, since I met with counsel 40 days ago to today. My answer to that in the context you asked it, which, I believe, was more of a general sense, was, yes, I do have knowledge of AWP and reimbursement to physicians --

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MR. HAAS: Okay.
THE WITNESS: -- as part of my -- part of my responsibility for the specialty pharmacy program at Blue Cross/Blue Shield of Massachusetts.
BY MR. HAAS:
Q. Prior to your work in 2003 and 2004 in the specialty pharmacy program, did you in your professional career have any involvement with the negotiation, contracting, or setting of reimbursement for physician-administered drugs?
A. No.
Q. So whatever knowledge in your experience was derived from 2003 forward; is that correct?
A. Correct.
Q. In 2003 and 2003, did you endeavor in connection with the specialty pharmacy program to obtain an understanding of Blue Cross/Blue Shield of Massachusetts' historical practices with respect to the negotiation, contracting, and setting of reimbursement for physician-

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administered drugs?
A. Yes.
Q. Okay. Please state your understanding as to all the ways that Blue Cross/Blue Shield of Massachusetts reimbursed physician-administered drugs from 1991 until today.
A. My understanding is Blue Cross/Blue Shield reimburses physician-administered drugs at a discount off of AWP.
Q. Okay. Do you also understand as the witness testified yesterday that from 1991 through today Blue Cross/Blue Shield reimbursed physician-administered drugs on a capitated basis?
A. No.
Q. You have no understanding as to whether they did, one way or the other?
A. No, I don't.
Q. Do you have any understanding as the witness testified yesterday as to whether Blue Cross/Blue Shield reimbursed physician-administered drugs prior to 1995 on a charge

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basis with a U and C cap?
A. No.
Q. Do you have any understanding as to whether and to what extent Blue Cross/Blue Shield reimbursed physician-administered drugs on a withhold basis as the witness testified yesterday?
A. No.
Q. Okay. So when you say that you have an understanding of how Blue Cross/Blue Shield of Massachusetts reimburses for physician-administered drugs, it is just with -- solely with respect to those drugs that Blue Cross/Blue Shield of Massachusetts reimburses on a fee-for-services basis to the extent they utilize a percentage of AWP?
A. That's correct.
Q. Were you aware that prior to 1995 Blue Cross/Blue Shield of Massachusetts did not reimburse physician-administered drugs either based upon a percentage of AWP or using fee schedules calculated by Medicare or any other

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entity?
A. No.
MR. SULLIVAN: Objection to the form.
Q. I am sorry. I didn't get your answer.
MR. SULLIVAN: Go ahead.
A. No.
Q. Now you say that you learned in 2003 and 2004 -- first of all, do you know when this litigation started?
A. I believe four years ago.
Q. So 2003-2004 time frame, which is about two years after the litigation started, what did you then learn about how Blue Cross/Blue Shield was then reimbursing physicians under its fee-for-service program?
A. That we reimbursed drugs at AWP minus five percent.
Q. Isn't it more accurate to say that Blue Cross/Blue Shield reimbursed drugs at the amount specified in the Medicare fee schedules at that time?
MR. SULLIVAN: Objection to the form.

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A. Correct.
Q. You have no understanding as to how in particular Medicare derived the exact numbers in its fee schedule; right?
A. Off of AWP.
Q. What is your basis for the understanding of that point?
A. That AWP is the -- or AWP is the industry standard in regards to reimbursement for drugs.
Q. Do you have an understanding of what the actual calculation was that Medicare used to derive the numbers in its fee schedule?
A. Not directly, no.
Q. Do you have of any AWP they used?
A. I believe it was Redbook.
Q. Do you have an understanding of whether all the carriers followed the same process in reimbursing for physician-administered drugs under Medicare?
A. I'm not aware if they all followed the same practice or not.

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Q. How in 2003-2004 did you obtain an understanding as to how Blue Cross/Blue Shield of Massachusetts reimbursed for physician-administered drugs on a fee-for- service basis?
A. Through the specialty pharmacy committee that was put in place.
Q. Who was on the specialty pharmacy committee?
A. I don't recall all the individuals, but it was a cross-section of various individuals from different departments, including pharmacy, clinical, medical directors, people on my staff, member services.
Q. Okay. If you could for me for the record list the individuals that you do recall and their titles.
A. Pam Mortland.
Q. What was her title?
A. I believe she was manager of pharmacy operations.
Q. Who else?
A. Joe Guianta, G-U-I-A-N-T-A.

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Q. What was his position?
A. Pharmacy analyst.
Q. Who else?
A. Matt Connell.
Q. What was his position?
A. Director of pharmacy operations; Jan Cook, medical director; Laurie Liscio, manager, ancillary services; Janis Pochini, contract manager, ancillary; David Lynch, pharmacy analyst; Tim Fitzgibbons, analyst in the actuary department; Paula Choquette, clinical case manager; Heather Cooke, contract specialist in the ancillary department; while not a full-time member, Karen Jackson -- Wells-Jackson, and I don't know her exact role, but she worked in pharmacy.
Q. Was there anyone from provider reimbursement or provider contracting?
A. Provider reimbursement, I believe Mike Mulrey participated in some of the meetings.
Q. Anybody else from the provider side?
A. Not that I recall.

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Q. Was it common at Blue Cross/Blue Shield of Massachusetts to have these cross- functional committees?
A. Very common.
Q. So it was common to have people from the pharmacy side of the business with people on the provider side of the business?
A. Depending upon the initiative.
Q. Who did the committee report to?
A. The committee reported to the new medical management model committee.
Q. The new management medical model?
A. New medical management model.
Q. Medical?
A. Yes. Acronym, NM3. I should say that is where I reported into.
Q. What is the new medical management model?
A. It is a committee of senior level individuals within the company that review major initiatives we're looking to implement.
Q. Who is on the committee?

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A. Maureen Coneys.
Q. What is her title?
A. She is the executive vice president -- excuse me -- senior vice president, healthcare services.
Q. Who else?
A. John Fallon, chief medical officer; Rena Vertes, senior VP, actuary; Kim Olson, vice president, vendor management services; Harold Picken, medical director, no longer on the committee.
Q. Was it the MM3 committee that had the ultimate say as to whether the pharmacy committee proposal would be adopted?
A. Yes.
MR. SULLIVAN: For the record, it is N, as in Nancy, M3.
THE WITNESS: Yes. New.
MR. HAAS: Thank you.
BY MR. HAAS:
Q. Is anybody on -- was --
MR. HAAS: Withdraw that question.

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Q. Was anybody on the specialty pharmacy committee, for example Jan Cook, a medical doctor?
A. Jan Cook is a medical doctor.
Q. Is there anybody else?
A. No.
Q. Were any members of the committee at any point in time retail pharmacists?
A. I am sorry. Is your question were they retail pharmacists at --
Q. Were they retail pharmacists in the retail pharmacy setting?
A. While also working at Blue Cross/Blue Shield?
Q. Well, either while working at Blue Cross/Blue Shield, i.e., in the staff model or in their career to your knowledge.
A. I don't know.
Q. Today does Blue Cross/Blue Shield of Massachusetts own or have any affiliations with any retail pharmacies?
A. No.

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Q. Does it have any -- does Blue Cross/Blue Shield of Massachusetts currently own or have any affiliations with physician clinics?
A. No.
Q. Does it own or have any affiliations with hospitals?
A. We have affiliations with hospitals, yes.
Q. Which hospitals?
A. Which hospitals?
Q. Yes.
A. The major hospitals in Massachusetts.
Q. What is the affiliation?
A. A contract relationship for the delivery of healthcare services.
Q. What is the nature of that contract relationship?
A. I'm sorry. Nature?
Q. When you say you have a contract relationship for the delivery of the healthcare services, --
A. Yes.

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Q. -- is that a reimbursement contract or is that some other type of contract?
A. It is a reimbursement contract. It includes quality components.
Q. You say "quality components." What does that mean?
A. We have a quality program in place that looks at specific quality measures in relation to reimbursements to our hospitals in our network.
Q. Is your relationship with the hospitals in your network different in kind than your relationship with the physicians in your network?
A. How so?
Q. That is my question. When I had asked whether you had affiliations with providers, you said no. When I asked whether you had affiliations with hospitals, you said yes, and you referred to this relationship.
A. I heard you say "owned." We do have affiliations with certainly physicians or providers by virtue of the fact that we're a healthcare insurer.

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Q. Right.
A. We do have -- we don't own retail pharmacies. We have affiliations with pharmacies --
Q. All right.
A. -- through our relationship with ESI, which contracts with them directly on our behalf.
Q. So you have an ownership interest in these hospitals?
MR HAAS: Withdraw that.
Q. Blue Cross/Blue Shield of Massachusetts has an ownership interest in the hospitals that you referred to?
MR. SULLIVAN: Objection to the form.
A. We don't own the hospitals.
Q. Do you have an ownership interest in the hospitals?
A. No.
Q. Okay. So it goes back to -- I am confused. Why are you -- what is the difference in the nature of the relationship between Blue Cross/Blue Shield of Massachusetts and providers

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and the nature of the relationship between Blue Cross/Blue Shield of Massachusetts and hospitals?
A. I understood your question to be do we have an ownership or an affiliation. We have an affiliation with hospitals, physicians, and retail pharmacies in the delivery of healthcare services to our members. We do not own them, or we don't have an ownership relationship.
Q. Okay. So there is no difference in kind from a reimbursement perspective or an ownership perspective or an affiliation perspective between your relationship with hospitals and doctors?
A. (No audible response.)
Q. When I initially asked this line of question, I asked the same question for doctors as I did for hospitals. You said no as to doctors. You said yes as to hospitals. I am trying to get an understanding of why that is.
MR. SULLIVAN: I think it had to do with the question that you asked. I think the witness had said when you asked the first

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question it was do you own or have affiliation with any pharmacies. Then when you asked about hospitals, you asked if there was an affiliation with hospitals, and he said yes. I don't think he is trying to be tricky.
MR. HAAS: Okay. If it is just an ambiguity here, that is fine. I don't want to dwell on something if there is no difference. That's what I am trying to drive at.
BY MR. HAAS:
Q. In your mind, is there a difference between Blue Cross/Blue Shield of Massachusetts' relationship with doctors and with hospitals?
A. We don't have an ownership relationship. We have an affiliation with doctors and hospitals for the delivery of healthcare services.
Q. So but my precise question is whether you see a difference in the nature of that relationship. Do you?
A. The nature of the relationship -- my answer to that would be a yes.

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Q. What is the difference?
A. The difference is how we go about contracting for the delivery of those services and what programs we have in place specific to those hospital relationships versus the contract relationships we have with our physicians in our network.
Q. And how do they differ in your mind?
A. Well, they differ in regards to reimbursement methodology. We pay hospitals on a DRG-based reimbursement. We don't pay physicians on a DRG reimbursement. We have quality programs in place for our hospitals. We have specific pay-for-performance programs in place with our physicians with different metrics, different measures. There are differences in how our relationships are established.
Q. When you say pay-for-performance relationship with providers, what does that mean?
A. It could mean a variety of different things. There are different quality measures that we look at in regards to members'

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satisfaction levels that we negotiate with physicians in their contracts.
Q. All right.
A. There are measures in regards to management of, consistent with those quality programs, management of medical services within a defined parameter, financial parameter, and the opportunity for physicians to share in compensation for meeting those performance goals.
Q. You are referring to the primary care physician incentive program?
A. That's right.
Q. Previously --
A. Well, actually that is one program. The program I was referring to was a program we refer to as the GPIP program, which is the Group Physician Incentive Program.
Q. I am sorry. What was the name of that program?
A. It is GPIP, Group Physician Incentive Program.
Q. Is it fair to say that the overall

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level of compensation that a physician receives depends in part upon the achievement of the metrics set forth in these programs?
A. Correct.
Q. Now just at a very general level, is it that the physician receives more incentives if it meets the metrics, or is it that it receives less incentives than it would otherwise receive if it does not?
A. They receive more incentive if they meet the metrics.
Q. So it is an additional amount that they could shoot for on top of what they would otherwise be reimbursed?
A. That's correct.
Q. What --
MR. HAAS: Withdraw that question.
Q. Who was it that was responsible for the formation of the specialty pharmacy committee?
A. I was.
Q. Did the concept of the specialty pharmacy committee arise out of your

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participation and discussions in the special committee meetings that you held with the Massachusetts Society of Clinical Oncology?
A. No.
Q. Okay. Was that part of the rationale for putting together the specialty pharmacy committee?
A. No. Those meetings came after the formation of the specialty pharmacy committee.
Q. What is the oncology MASCO specialty committee?
A. I am sorry. I didn't get your question.
Q. What is the oncology MASCO specialty committee?
A. I am familiar with the Massachusetts Association of Clinical Oncologists or Massachusetts Society of Clinical Oncologists, MASCO.
Q. Yes.
A. My understanding is that is a committee of oncologists that meet. I'm not sure of the

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frequency of their meetings.
Q. Who is on the committee to your knowledge?
A. I don't know all of the members of the committee, but having participated in discussions with MASCO, Theresa Mulvey, who, I believe, is the president of MASCO; Dr. Wisch, who is an oncologist; Dr. Kagan, who is an oncologist; and I'm not familiar with the -- I am not recalling the other names of the oncologists that were part of that committee.
Q. And who participates in the specialty committee with MASCO on behalf of Blue Cross/Blue Shield of Massachusetts?
A. When you say specialty committee with MASCO, --
Q. Yes.
A. -- I am not familiar with what you are referring to.
MR. HAAS: Mark this.
(Two-page memorandum dated May 1, 2002, to Dr. Fanale from Dr. Cook,

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production numbers BCBSMA-AWP-0003 and 0004 marked Exhibit Killion 001 for identification.)

BY MR. HAAS:

Q. We are marking as Deposition Exhibit Killion 001 a document Bates stamped BCBSMA-AWP-0003 to 0004.

(Handing Exhibit Killion 001 to the witness.)

Q. This is a document dated May 1, 2002, from Jan Cook, M.D., to James Fanale, M.D., and you will see on the subject line it refers to Oncology, bracket, MASCO, Special Committee Minutes, April 29, 2002.

Do you see that?

A. Yes.

Q. Let me ask it this way. Are you familiar with a committee referred to as the oncology MASCO specialty committee?

A. No. I am familiar with MASCO. Although I am aware that Jan Cook had regular meetings with MASCO.

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Q. Were you aware that Jan Cook had regular meetings with other physician societies?

A. Yes.

Q. What other physician societies?

A. She participated in meetings with the Mass. Arthrometric Society, the Mass. Chiropractic Society, and a variety of other medical societies.

Q. Who is James Fanale, M.D.?

A. James Fanale was our chief medical officer.

Q. And Steve Fox was the director of provider relations?

A. That's correct.

Q. Who is Robert Mandel?

A. Robert Mandel I believe at the time was vice president for provider services.

Q. He is no longer with the company?

A. He left the company. He is now back with the company.

Q. What is his current position?

A. He is responsible for the

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transformation initiative.

Q. What is the transformation initiative?

A. It is an initiative where -- how best to describe the transformation initiative? It is a major initiative that Blue Cross/Blue Shield is looking at in regards to having an impact on how the -- the way in which healthcare is delivered within the Commonwealth of Massachusetts.

Q. And you say it is a major initiative to have impact. What does that mean?

A. It is a priority for our company in 2006 and beyond.

Q. I am trying to get an understanding of what the initiative is.

A. It is looking at a variety of different issues with the healthcare system and how we as a major player in the marketplace can be a leader in addressing a number of those issues.

Q. What are those issues?

A. The uninsured pool; quality; misuse of healthcare; underuse, overuse of healthcare; e-health initiatives related to medical records.

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Q. Do any of the initiatives involve reimbursement issues?

A. I'm not aware at this point specifically. The committee is just forming.

Q. Are you a member of that committee?

A. Not as of yet. Again the committee is just forming.

Q. To your understanding as of today, given its early phase, does the committee nevertheless have reimbursement for physician-administered drugs as part of its agenda?

A. I'm -- I'm not aware of one way or the other whether or not that is part of the overall agenda.

Q. So turning back to what we have marked as Deposition Exhibit Killion 001, when to your knowledge was the first time that you participated in any meeting of the MASCO specialty committee?

A. It would have been after we initiated the specialty pharmacy committee at Blue Cross/Blue Shield, which would have been, I

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believe, sometime in 2003.
Q. If you would look at that page, the second arrow in the middle talks about "multiple co-pays for cancer patients undergoing chemotherapy." For the record, it says, "MASCO doctors are concerned that payments may be foregoing chemotherapy in the office" --
MR. SULLIVAN: I think it said "patients."
MR. HAAS: Is that what I said? Let me read it again for the record so we are clear.
BY MR. HAAS:
Q. "MASCO's doctors are concerned that patients may be foregoing chemotherapy in the office set because of multiple co-pays," close quote.
And down at the bottom under "Action Item," it says, quote, "Robert to look into BCBSMA waiving co-pays for outpatient chemotherapy. Report back in one month."
Were you involved at all in any of your work at Blue Cross/Blue Shield in any initiatives

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designed to ensure that patients were administered drugs in physicians' offices rather than in the hospital?
A. No.
Q. Do you have any understanding of whether it was an agenda of Blue Cross/Blue Shield to encourage the administration of drugs in office versus in the hospital setting?
A. No.
Q. Are you aware of any studies or analyses of whether the costs of administering drugs in office is less to Blue Cross/Blue Shield of Massachusetts than administering drugs in the hospital setting?
A. Yes.
Q. What are you aware of?
A. That reimbursement in the hospital setting is a more expensive setting than in the physician office.
Q. That is something that Blue Cross/Blue Shield of Massachusetts studies or tracks?
A. It is something we have looked at.

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Q. In what context has Blue Cross/Blue Shield of Massachusetts looked at that?
A. In understanding an analysis, what our -- what our reimbursement is in the hospital setting versus the office setting.
Q. Were there studies done?
A. I can't say there were specific studies done, no.
Q. Were there cost analyses done?
A. I don't remember specific cost analyses that were done.
Q. What is the basis for your understanding that Blue Cross/Blue Shield of Massachusetts analyzed this?
A. I know we had looked at reimbursement specific to how hospitals were reimbursed for medications, not only oncology, but medications, versus how our reimbursement was structured in the physician setting.
Q. Did Blue Cross/Blue Shield have any programs or plans or initiatives designed to encourage the administration of drugs in office

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because it was cheaper to Blue Cross/Blue Shield of Massachusetts as well as the healthcare system as a whole?
A. No. Not that I'm aware of.
Q. What was the outcome of this analysis that you are aware of which concluded that it's less costly to administer the drugs in office than in the hospital setting?
A. The outcome of the analysis was looking at how we reimburse in the hospital setting and changing that reimbursement methodology.
Q. Were you aware of any programs that were put into place to waive the co-payments for patients in the in-office setting in order to encourage the administration of drugs in office?
A. No.
Q. Why is it that Jan Cook had these meetings with or has these meetings with these physician societies?
A. There are three regional medical directors. Each of them are assigned specific medical societies to work with and meet with.

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Q. Who are the other two in addition to Jan Cook?
A. Barry Zallen and Peter Goldbach.
Q. And why are they assigned to meet with these societies?
A. We very much as an organization encourage dialogue with our providers' physicians.
Q. Why do you encourage dialogue with physicians?
A. We believe that open dialogue leads to better partnership and the better delivery of services to our members if they are informed in regards to initiatives that we are moving forward on.
Q. Is it important to Blue Cross/Blue Shield of Massachusetts to maintain good relations with the physicians in its networks?
A. That is important.
Q. Why is that important?
A. It is certainly important because we want to make sure that our members are getting

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access to good care and that our physicians have a satisfaction level in regards to the relationship that we share with them.
Q. All right. When you say you want to ensure that the members of Blue Cross/Blue Shield have access to good care, does that mean you want to ensure that the quality doctors are maintained in the Blue Cross/Blue Shield of Massachusetts network?
A. That's correct.
Q. Who is John O'Brien?
A. John O'Brien is a provider -- provider relations manager who works with our physicians.
Q. Does he report to Steve Fox?
A. Yes, he does.
Q. So after you formed this specialty pharmacy committee, what was the next thing you did with respect to this pharmacy program initiative?
A. We discussed sending out an RFP to the specialty pharmacies concerned with the price we were paying for the cost of drugs and making sure

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that we had good delivery systems in place to provide necessary medications to our members in a cost effective manner.
Q. When was the first time that you heard of a specialty pharmacy?
A. When I was at Tufts Health Plan.
Q. Was that in the 1986 to 1995 time frame?
A. Yes.
Q. In what capacity did you learn about specialty pharmacies while at Tufts?
A. At that point they were just coming into being.
Q. What was your understanding at this time of the role of the specialty pharmacy?
A. That they had the ability to offer specific drugs at more cost effective pricing than we were paying at that point in time and could also deliver drug management programs to our members that would deliver a higher level of quality.
Q. Did Tufts utilize a specialty pharmacy

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relationship?
A. Not at that time.
Q. Why not?
A. We were just starting to look at it at that point.
Q. Did there come a point in time to your knowledge that Tufts adopted the specialty pharmacy model?
A. It is my understanding they did.
Q. Is that while you worked there?
A. No.
Q. When is it your understanding that they adopted that model?
A. At some point after I left. I don't know specifically when.
Q. Did you do any analysis at Tufts as to the potential savings to the organization in the event they adopted a specialty pharmacy relationship for the supply of physician-administered drugs?
A. No. At that point I was involved in the retail pharmacy side.

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Q. Were you familiar with any studies or analyses of that issue?
A. I am familiar with The Wall Street Journal article that looked at oncologists paying for drugs at a discount off of AWP that came out in '04.
Q. Talking about the time frame when you were at Tufts, were you aware of any analysis done?
A. No, I was not.
Q. Who prepared the RFP?
A. It was a departmental group of individuals that were involved in the specialty pharmacy committee.
Q. So it was a subgroup of the specialty pharmacy committee?
A. That's correct.
Q. Did you send out the RFP at that time?
A. Yes, we did.
Q. When did you send it out?
A. We sent it out, I believe, in 2003.
Q. How many entities did you send it out

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to?
A. Approximately 10 to 12 different entities.
Q. Did you eventually select an entity from the RFP process?
A. Yes, we did.
Q. Was that Priority?
A. Priority was one of them.
Q. And Caremark is the other?
A. Caremark is the other.
Q. Does Priority and Caremark provide or supply drugs to different groups of providers?
A. Yes. That's my understanding.
Q. What is the division between the two?
A. Priority, we contract with Priority for MS drugs, hep C, hepatitis C. We contract with Caremark for drugs for members with hemophilia, so factor products.
I should mention we also have one other class of drugs that we contract for as well, and there are three pharmacies involved in that relationship, and that is for fertility

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medications.
Q. All right.
A. Priority is one of them; Village Pharmacy, a local pharmacy, is another; and the third pharmacy is IVP Pharmaceuticals.
Q. Did your selection of Village and IVP come out of this RFP process?
A. Yes, it did.
Q. All right. So let me see if I have the list complete. Blue Cross/Blue Shield contracts with specialty pharmacies for the supply of MS drugs, hep c drugs, hemophiliac drugs? Is that what you said?
A. Well, drugs with members suffering from hemophilia.
Q. Hemophilia?
A. Factor product drugs.
Q. And fertility drugs?
A. Fertility drugs.
Q. What are the factor drugs that are supplied for hemophilia patients?
A. They are factor drugs. They are called

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factor products.
Q. What types of factors? There are different types of factors, growth factors.
A. Not for hemophilia.
Q. That is why I am asking. Is it red blood growth factors?
A. For hemophilia, it is factor 8, factor 9, it is a variety of different medications that a hemophilia patient would take to assist in coagulation.
Q. What are the hep c drugs?
A. There is a variety of hep c drugs. I can't tell you offhand exactly what they are.
Q. Do they fall in any particular class other than hep c drugs?
A. They are drugs that are commonly taken by patients that have hepatitis C.
Q. Antiviral drugs?
A. Yes.
Q. Okay. What are the MS drugs?
A. Avonex, Betaseron, Copaxone.
Q. Why did Blue Cross/Blue Shield of

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Massachusetts limit the drugs supplied through the specialty pharmacy vehicle to these four categories of drugs?
A. We haven't. We're continuing to pursue the specialty pharmacy initiative. A new RFP is going out, and we are looking at expanding the amount of medications that we include in the specialty pharmacy program beyond these drugs.
Q. Okay. Why to date has Blue Cross/Blue Shield of Massachusetts only contracted to supply for the supply of these four categories?
A. We have 2.8 million members. We wanted to stage the implementation of our specialty pharmacy program to make it a smooth transition for our members so that it was a successful implementation. So the decision was via the NM3 committee and the specialty pharmacy committee to make sure that we do it in a coordinated fashion without rolling out every individual initiative at all one time.
Q. All right.
A. So it is an ongoing initiative.

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Q. All right. How does the specialty pharmacy program work with respect to the supply of drugs to your members?
A. We contract directly with the specialty pharmacy -- well, I should say we contract through ESI, our pharmacy benefit management company, which contracts directly with the specialty pharmacy companies for the delivery of these medications at a discount. They supply the medications to our members and also provide clinical services to our members as far as phone calls, how is the member doing, what adverse reactions are they having, are they having problems with the medications, are they taking their medications on a routine basis, and so on.
Q. All right. Do the --
MR. HAAS: Withdraw that.
Q. In connection with this program, is it incumbent upon the members to bring the drugs to the doctors for administration?
A. Not necessarily.
Q. With respect to drugs that are

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physician- administered drugs, are those --
MR. HAAS: Well, withdraw that question.
Q. Does the specialty pharmacy program that Blue Cross/Blue Shield of Massachusetts implemented contemplate the supply of physician-administered drugs?
A. Yes.
Q. Okay. With respect to those drugs, the first question: Does the current structure now in place involve the supply of physician-administered drugs to the members of Blue Cross/Blue Shield?
A. The drugs that we contract for today are generally drugs that members have the ability to administer after training by the physician.
Q. Okay. Are there any drugs currently within the purview of the specialty pharmacy program that must be administered by a physician or under the supervision of a physician?
A. I think the answer to that is it depends upon the physician, but, no, the members

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can be trained to administer these drugs.
Q. Okay.
(The witness and Mr. Sullivan conferring off the record.)
BY MR. HAAS:
Q. Would you like to supplement your answer?
A. No.
Q. You said that the PBM supplies the drugs to the members at a discounted cost. What does that mean?
A. I didn't say the PBM supplied the drugs.
Q. I mean the PBM contracts to supply -- contracts with the specialty pharmacy to supply the drugs to the members at a discounted cost. When you say "discounted cost," what does that mean?
A. A discount off of what we were originally paying for those drugs, a steeper discount, anywhere from for hemophilia drugs up to a discount off of minus 40 percent off of AWP.

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Q. Does Blue Cross/Blue Shield of Massachusetts contemplate expanding the specialty pharmacy program to encompass drugs that must be administered by a physician or under the supervision of a physician?
A. Yes.
Q. Okay.
A. As I said before, we have got an RFP that is going out.
Q. In connection with that -- well, what are the drugs that Blue Cross/Blue Shield of Massachusetts is contemplating supplying to the physicians -- specialty pharmacy relationship under that new RFP?
A. We are evaluating all self -- all physician-administered and self- administered drugs.
Q. In connection with the drugs that are physician-administered or self- administered drugs that you contemplate will be included within this expanded role of the specialty pharmacy, does Blue Cross/Blue Shield contemplate

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increasing the servicing fee or administration fee associated with those drugs to the extent that they are supplied through the specialty pharmacy?
A. I think that is something that needs further evaluation and we're continuing to study.
Q. And you have studied that issue already?
A. I can't say that we have fully studied this issue already. No.
Q. Have you partially studied that issue?
A. We know that -- we certainly pay an administration fee for the delivery of drugs, and we pay for the drugs.
Q. Specifically with respect to whether Blue Cross/Blue Shield of Massachusetts has contemplated or considered whether to increase the administration fee or servicing fee with respect to the drugs that must be administered by a physician that would otherwise be encompassed in the specialty pharmacy program, has Blue Cross/Blue Shield of Massachusetts considered

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that or analyzed that specific issue?
A. There have been discussions about that, yes.
Q. Have any documents been created concerning that specific issue?
A. Not that I'm aware of.
Q. Who have those conversations or communications been had with?
A. Well, not that I'm aware of directly. The conversations would have been had with finance and with a committee within Blue Cross.
Q. And so today you are aware of no documentation whatsoever that addresses that issue?
A. I'm aware of -- if I can back up, I'm aware of one document that looked at the administration cost specific to I believe oncology medications.
Q. All right. Has that document been produced in this litigation?
MR. SULLIVAN: If you know.
Q. Just if you know. All of these

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questions are if you know.
A. I don't know.
Q. Do you have a copy of that document in your files?
A. I -- I searched for it. I did not find a document in my files.
Q. Who is --
A. I didn't produce it.
Q. Who was the author of the document?
A. Mike Mulrey.
Q. Did you receive that document by e-mail?
A. Yes.
Q. Did the document have a title on it?
A. It may have. I don't -- I don't know what the title would have been.
Q. When did you receive it?
A. I don't know the exact time frame. I believe it would have been in 2004 when CMS was moving to a new reimbursement structure.
MR. HAAS: Could you mark this?
(Two-page Specialty Committee

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Meeting marked Exhibit Killion 002 for identification.)
BY MR. HAAS:
Q. Marked as Deposition Exhibit Killion 002 is a document Bates stamped -- not Bates stamped -- it hasn't been produced to us with a Bates stamp -- titled "Blue Cross/Blue Shield of Massachusetts, Specialty Committee Meeting, Specialty Group, Massachusetts Society of Clinical Oncology, parenthetical, MSCO, date June 10, 2004.
(Handing Exhibit Killion 002 to the witness.)
Q. Mr. Killion, I ask that you take a look at this document and tell me if you recognize it; if so, what it is.
(Pause.)
(The witness viewing Exhibit Killion 002.)
A. I have read the document.
Q. What is it?
A. It is minutes that were in followup to

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a meeting that we had, Jan Cook and I from Blue Cross/Blue Shield, with the Mass. Society of Clinical Oncology discussing with them our -- two initiatives: one, our discussion around pay for performance and looking at quality cost program as well as a discussion with them in regards to our specialty pharmacy program.
Q. Were you involved at all in the discussions of whether to change the reimbursement methodology of Blue Cross/Blue Shield of Massachusetts from a fee-for-service amount based upon AWP or based upon Medicare to one based upon ASP?
A. I was involved in some of those discussions, yes.
Q. Were you involved in the determination of not to switch the methodology from an AWP-based methodology to an ASP-based methodology?
A. I was not involved in making that decision. I had comment in regards to that decision.
Q. What analysis did you do and commentary

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did you provide in connection thereto?
A. That at that point ASP was not industry standard, and that Blue Cross wanted to wait and further evaluate CMS's methodology before implementing an initiative with our oncologists that wasn't yet industry standard.
Q. Where is that documented?
A. I don't believe that it is documented.
Q. That was your input to the process, but you didn't document it in any way or form?
A. I had discussions.
Q. Who did you have discussions with?
A. Deb Devaux.
Q. Anyone else?
A. I had discussions with Jan Cook about that as well.
THE WITNESS: Can we take a five-minute break?
MR. HAAS: Sure.
(Recess taken at 11:32 a.m.)
(Recess ended at 11:39 a.m.)
MR. HAAS: Back on the record.

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BY MR. HAAS:
Q. You had mentioned that Blue Cross/Blue Shield had made the determination not to reduce reimbursement under the ASP methodology. Is it your understanding that the industry standard is to maintain reimbursement at 95 percent of AWP?
A. My understanding is not to -- the industry standard is not to move to ASP at this point in time.
Q. Right. My question is a little different. Is it your understanding that the industry standard is to maintain reimbursement at 95 percent of AWP?
A. For the most part, yes, that's correct.
Q. I have shown you what has been marked as Deposition Exhibit Killion 002, and I'm not sure if we have established the foundation, but what is this document?
A. It was a meeting that we had with MASCO. The date on it is June 10th of 2004. We are -- we had discussions with them on, well, two things in particular: specialty pharmacy as well

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as the development of a pay-for-performance program with the oncologists.
Q. Who prepared these minutes?
A. I believe Jan Cook did, but there doesn't appear to be an author.
Q. Did you have a copy of these in your files?
A. I'm not aware if I did.
Q. Do you recall reviewing this document?
A. I do not.
Q. Was it common to circulate minutes such as this following a meeting of the --
A. Yes.
Q. Under the heading "Specialty Pharmacy" in the third row of the chart, it refers to communications that apparently were had between the MASCO Society and Blue Cross/Blue Shield of Massachusetts. Do you recall those conversations?
A. I am sorry. Where are you referring to?
MR. SULLIVAN: I think he is referring

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to the third --
(Counsel pointing.)
Q. The third row. For the record, I am referring to the third row of the table --
A. Yes.
Q. -- numbered 3, entitled "Specialty Pharmacy," the third column under the heading "Discussion," states, and I will just read for the record so we are clear, "The group does not believe specialty pharmacy, as they have experienced it, will be successful with oncology patients. Barriers to success, A, specialty pharmacy hampers same day administration of drugs; B, specialty pharmacy inhibits changes of doses in realtime; C, specialty pharmacy services are wasteful. Drugs delivered to members of the group" --
MR. SULLIVAN: "Drugs were."
MR. HAAS: Excuse me. Thank you.
Q. "Drugs were delivered to members of the group unfit for use. When they told the specialty pharmacies to dispose of drugs, period.

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D, Harvard Pilgrim instituted a specialty pharmacy program in the past. The group opted out and still was paid."
A. Yes.
MR. SULLIVAN: "And was still paid."
MR. HAAS: "And was still paid."
Q. Do you recall those discussions?
A. Yes, I do.
Q. Now was this meeting held before or after Blue Cross/Blue Shield set up the pharmacy -- the specialty pharmacy relationship?
A. It was after, after we initiated the specialty pharmacy initiative and sent out our RFPs.
Q. That is not my question. Did this meeting happen before or after the program was put into place and drugs, the four categories of drugs that you previously mentioned, became available for the specialty pharmacy relationship?
A. The relationship with Caremark I believe at that point was in place, but the

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relationship for the other categories at that point I do not believe was in place at that point in time. We were in the process of looking at categories of drugs that we would implement and again how we would roll those specific therapeutic classes out.
Q. All right.
A. So I believe the only one that we had in place at that time was the relationship with Caremark for hemophilia products, the factor products.
Q. Did Blue Cross/Blue Shield consider these to be valid concerns with respect to the decision of whether to implement a specialty pharmacy relationship?
MR. SULLIVAN: Objection to the form.
A. There were -- there were concerns that we certainly wanted to get feedback on from the oncologists as we shared with them our specialty pharmacy initiative looking at self administered as well as administered drugs by physicians.
Q. All right. Did Blue Cross/Blue Shield

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of Massachusetts take into account these considerations in deciding whether to implement a specialty pharmacy relationship for the supply of oncology drugs?

MR. SULLIVAN: Objection to the form.

A. I would say that in dialogue with MASCO those are issues that we take into consideration as we continue to move forward in evaluating how we will implement specialty pharmacy program relative to oncology meds or any other meds that are administered in physicians' offices.

Q. When the last section, the last sentence of the phrase I read into the record states, "The group opted out and was still paid," what is your understanding of what that means?

A. My understanding of that is that Harvard Pilgrim implemented a specialty pharmacy program. I'm not clear what that program was relative to oncology. But that the group, and I don't know if the group refers to a specific group of physicians or all the oncologists, opted not to participate, and Harvard Pilgrim continued

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to pay them in whatever manner they were paying them prior to implementing whatever was the specialty pharmacy program.

Q. All right. So is it fair to say that the Harvard Pilgrim program to your knowledge was a voluntary program in that the physicians did not have to participate in that program?

MR. SULLIVAN: Objection. Form.

A. I don't know how Harvard Pilgrim rolled the program out, whether or not Harvard Pilgrim considered it to be voluntary or mandatory. All I know is that from the minutes and the meeting that physicians chose not to participate, and Harvard Pilgrim apparently made the decision to reimburse them.

Q. What influence, if any, did that consideration have in deciding whether or not Blue Cross/Blue Shield of Massachusetts should implement a specialty pharmacy relationship with oncology or for the supply of oncology drugs that required physicians to participate in the program?

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A. Sure. Before we implement almost any type of program, because of the collaborative nature, we engage our physicians in. We listen and understand and hear their concerns so that we can develop a program that will address those concerns, both on the physicians' side as well as the appropriate delivery of services to our members, so our members aren't caught in the middle, so that we can roll out a program that is both successful physician side, member side, for the plan, and is cost effective.

Q. Right.

A. So those play a role into our decision as we continue to evaluate the direction we are going relative to implementation of such a program.

Q. Sure. If an oncology group, an oncologist says this specialty pharmacy vehicle is not going to provide the best service to the patients because potentially bad things can happen with the drug or the supply of drugs, that would be something that Blue Cross/Blue Shield

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would take into account; correct?

A. We would take into account, and we would research, and, correct, we would take into account.

Q. Have you researched that particular issue?

A. We again as part of the initiative in rolling out a specialty pharmacy program we elected to identify certain therapeutic classes of drugs that had an opportunity to roll out in a timely fashion that would provide cost savings opportunities and quality benefits to our members, so we are continuing to evaluate that for oncology.

Q. Specifically with oncology, did you study this particular issue that we have been discussing, whether or not there would be adverse consequences with respect to the supply of the drugs to the patients in the event that there was a movement to the specialty pharmacy model?

A. We -- we hadn't specifically studied that, because our initiative was to look at other

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therapeutic classes prior to looking at oncology.
Q. But from your perspective, it is an issue worthy of debate?
MR. SULLIVAN: Objection.
A. It is an issue that we would take feedback on and understand their concerns and their issues and then evaluate how best we could roll out a program to address those issues.
Q. Have you solicited any input or information from the pharmaceutical manufacturers with respect to this issue of whether or not the specialty pharmacy model is the more appropriate model?
A. No.
Q. Would you be willing to participate -- is that one consideration that you are contemplating involving in the dialogue, the manufacturer's perspective?
MR. SULLIVAN: Objection to form. Beyond the scope.
MR. HAAS: Withdraw that question.
BY MR. HAAS:

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Q. Is Blue Cross/Blue Shield of Massachusetts contemplating involving pharmaceutical manufacturers in the dialogue as to whether or not the specialty pharmacy relationship makes sense?
A. We haven't --
MR. SULLIVAN: Objection. Beyond the scope.
Q. Okay.
MR. SULLIVAN: Go ahead. You can answer.
A. We haven't discussed that.
Q. And in your view, would it be appropriate for manufacturers to be involved in that process?
MR. SULLIVAN: Objection. Beyond the scope.
A. I am not sure.
Q. Are you aware of whether any manufacturers have studied that issue, whether or not the specialty pharmacy relationship is more proper, appropriate for the administration of

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drugs to particular classes --
MR. SULLIVAN: Objection.
Q. -- of physicians?
MR. SULLIVAN: Beyond -- I am sorry. I don't mean to interrupt. Objection. Beyond the scope.
A. Can you repeat that again? I apologize.
Q. Sure. Has Blue Cross/Blue Shield of Massachusetts looked into the issue of whether or not pharmaceuticals -- that pharmaceutical manufacturers have studied the issued?
A. Not --
MR. SULLIVAN: Objection. Beyond the scope.
A. Not that I'm aware of.
Q. Has Blue Cross/Blue Shield of Massachusetts given any consideration as to whether a specialty pharmacy program that they are looking to implement with respect to physician-administered drugs would be voluntary or mandatory with respect to the participation of

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the physicians?
A. I don't participate in the specialty pharmacy committee currently, but my understanding is that that is a point that hasn't been discussed yet at this point. Right now the RFP is in the process of going out.
Q. And the current RFP that is in the process of going out, does that include physician- administered drugs?
A. Yes, it does.
Q. Okay. Does that RFP specify the contemplated volume of physician- administered drugs that would be encompassed in the specialty pharmacy program?
A. There has been analysis looking at all of those drugs as part of the analysis that was done to look at implementing the therapeutic classes I previously mentioned.
Q. Who did that analysis?
A. That was done by the pharmacy department.
Q. Who in particular?

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A. I believe one of the analysts in the pharmacy department.
Q. So to the best of your knowledge at this point in time, Blue Cross/Blue Shield of Massachusetts has no intent to make this plan mandatory with respect to the drugs that must be administered in physicians' offices or under the supervision of physicians?
MR. SULLIVAN: Objection. Form.
A. That is something we will continue to evaluate.
Q. I know. But my question specifically is is it your understanding that today there is no intent that the plan be mandatory with respect to participation of physicians with respect to the administration of drugs in offices.
MR. SULLIVAN: Objection; beyond the scope. Objection; form.
You can go ahead and answer.
THE WITNESS: I apologize. Can I have that question again?
MR. HAAS: Sure. It was not the best

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question in the world anyway.
BY MR. HAAS:
Q. The question is are you aware of whether the current intent of Blue Cross/Blue Shield of Massachusetts is to make participation in the specialty pharmacy program mandatory for drugs that are administered in office or administered pursuant to the supervision of a physician.
MR. SULLIVAN: The same objections.
A. And I'm aware that that has not been defined yet.
Q. So based upon your testimony -- let me see if I get this right -- it hasn't been determined whether the program will be mandatory, and it has not been determined whether or not the reimbursement for the servicing and administration fees would be increased to the physicians that choose to participate in the program?
A. Correct.
Q. And it is your understanding that those

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are both issues being discussed and contemplated currently by the specialty pharmacy committee?
A. The specialty pharmacy committee currently is really working on putting together or has -- was putting together, is going out I believe next week, the RFP, so that has really been the focus of the specialty pharmacy committee to date.
Q. Is it your understanding that those issues are on the agenda?
A. I don't know if those issues have specifically been put on the agenda to date. No. I don't believe so.
Q. Is it your understanding that the program will be expanded without addressing those issues?
A. No. They will be addressed.
Q. They will be addressed prior to any expansion?
A. They definitely will.
Q. Are you aware of whether Blue Cross/Blue Shield of Massachusetts has a

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formulary with respect to physician-administered drugs? Do you have any knowledge in that regard?
A. I am as it relates to fertility medications.
Q. What is the formulary as it relates to fertility medications?
A. Gonal F.
Q. I am sorry. What was that?
A. The medication Gonal F, G-O-N-A-L F.
Q. What is the particular formulary direction with respect to that drug?
A. That that is our preferred drug. That the alternative drug is not on our formulary and needs prior approval.
Q. Why did Blue Cross/Blue Shield of Massachusetts implement that formulary restriction with respect to that drug?
MR. SULLIVAN: Objection to form.
A. Blue Cross/Blue Shield felt -- we as an organization felt that both drugs were comparable and made the decision that Gonal F being equal to Follistim was the medication that would be on our